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VIA E-MAIL AND HAND DELIVERY

June 13, 2019

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**Re: Comment on Environmental Exemption (PRC § 21155.4) for 10K Project
Located at 930 K Street (P18-056 / File ID: 2019-00813)**

Honorable Members of the Planning and Design Commission:

I am writing on behalf of the **Laborers International Union of North America, Local Union 185** and its members living in Sacramento County and/or the City of Sacramento ("LIUNA"), regarding the 10K Project located at 920, 924, and 930 K Street in Sacramento, California ("Project"). The proposed project includes the demolition of three existing commercial buildings and construction of a 15-story mixed-use development (with hotel/residential/retail uses) with the Central Business District (C-3-SPD) zone and the Central City Special Planning District.

The City of Sacramento ("City") has not conducted any environmental review pursuant to the California Environmental Quality Act ("CEQA") for the Project. Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, has reviewed the proposed Project and its

environmental effects. He has identified a number of significant air quality impacts from the proposed Project. By opting to proceed without any CEQA review for the Project, the City has failed to analyze and mitigate these air quality impacts. LiUNA urges the Planning and Design Commission not to approve the Project, and instead to direct staff to prepare a Draft EIR for the Project, and to circulate the Draft EIR for public review and comment prior to Project approval.

PROJECT DESCRIPTION

The proposed Project is located at the southwest corner of 10th and K Street in Sacramento. It involves the demolition of three existing commercial buildings and the construction of a new 15-story mixed use building. The building will include a 220-room hotel, 186 residential units, and approximately 7,761 square feet of restaurant/retail uses. There will be 40 proposed valet parking spaces.

In April 2018, the City certified an EIR for the Central City Specific Plan ("CCSP EIR"). This EIR considered the environmental impacts of the proposed Central City Specific Plan ("CCSP") for the City of Sacramento. The CCSP area is located within the City of Sacramento's Central City community and is in the Central City Community Plan ("CCCP") area. The Central City Specific Plan provides an update to existing City planning documents, including the 2035 General Plan and Central City Community Plan, to facilitate preferred growth in Downtown Sacramento.

LEGAL BACKGROUND

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the fair argument standard. Under that standard, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment. Pub. Res. Code § 21082.2; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) ("Laurel Heights II") 6 Cal. 4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.

The City relies on Public Resources Code (PRC) Section 21155.4, a CEQA statutory exemption, to claim that the proposed Project is exempt from further CEQA review. PRC § 21155.4 states as follows:

(a) Except as provided in subdivision (b), a residential, employment center, as defined in paragraph (1) of subdivision (a) of Section 21099, or mixed-use development project, including any subdivision, or any zoning, change that meets all of the following criteria is exempt from the requirements of this division:

(1) The project is proposed within a transit priority area, as defined in subdivision (a) of Section 21099.

(2) The project is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified.

(3) The project is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emissions reduction targets.

(b) Further environmental review shall be conducted only if any of the events specified in Section 21166 have occurred.

The Staff Report indicates that City relies on this exemption because it claims that the proposed Project is a mixed-use development project, is located in a transit priority area, is consistent with the CCSP, is consistent with the EIR prepared for the CCSP, and is consistent with the Metropolitan Transportation Plan/Sustainable Communities Strategy ("MTP/SCS") adopted by the Sacramento Area Council of Governments ("SACOG").

The exception to PRC Section 21155.4, which requires that a project undergo further environmental review is contained in PRC Section 21166, which states the following:

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

Pursuant to Section 15162(a) of the State CEQA Guidelines, the applicable Guidelines for PRC Sec. 21166, a subsequent EIR or Negative Declaration is only required when:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant

environmental effects or a substantial increase in the severity of previously identified significant effects;

- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Here, the City certified and adopted the CCSP EIR on April 19, 2018. The Staff Report for the proposed Project mentions that *“There have been no substantial changes in the CCSP or in the circumstances in the specific plan area that would affect the EIR analysis and conclusions.”* However, the Staff Report fails to consider the third prong of PRC § 21166. To the extent that there is any new information that was not known and could not have been known at the time the CCSP EIR was certified, then the proposed Project would require further environmental review and the statutory exemption would not be applicable.

DISCUSSION

I. THE CCSP EIR FAILS TO CONSIDER NEW INFORMATION RELATED TO INDOOR AIR QUALITY IMPACTS.

One component of a typical air quality impact analysis under CEQA is evaluating the health risk impacts of toxic air contaminant (“TAC”) emissions contributed by a proposed project as well as cumulatively with other nearby TAC sources. Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, has conducted a review of the proposed Project. Indoor Environmental Engineering Comments (June 12, 2019) (“Offermann Comment”) (attached hereto as Exhibit A). Mr. Offermann is one of the world’s leading experts on indoor air quality and has published extensively on the topic. As discussed below and set forth in Mr. Offermann’s

comments, the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents. In addition, Mr. Offermann comments are based new information regarding the achievement of indoor concentration of formaldehyde with cancer risks that was made available subsequent to the certification of the CCSP EIR. As a result of these significant impacts to air quality, the Project may not rely upon the referenced exemption to forego the preparation of an EIR for the Project. Moreover, the CCSP EIR contains no analysis of indoor air quality impacts, nor does it contain any mitigation measures for potential indoor air quality impacts.

Mr. Offermann explains that many composite wood products typically used in home and apartment building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." Offermann Comment, pp. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that future residents of the Project will be exposed to a cancer risk from formaldehyde of approximately 125 per million, assuming all materials are compliant with the California Air Resources Board's ("CARB") formaldehyde airborne toxics control measure. *Id.*, pp. 3, 4. Mr. Offermann also notes that the cancer risk will exceed the threshold of 10 per million for occupants that do not have continuous exposure. *Id.*, p. 4. This information is based on the 2018 Chan study, which analyzed indoor concentrations of formaldehyde in new homes built with CARB Phase 2 Formaldehyde ATCM [Airborne Toxics Control Measure] materials. *Id.*, p. 3. Mr. Offerman notes that this study was presented in July 2018. *Id.*, pp. 9-10. Thus, the information was not available when the CCSP EIR was certified. This is new information pursuant to PRC § 21166(c), and triggers a requirement for the City to prepare an EIR for the Project.

Mr. Offerman notes that a cancer risk of 125 per million is more than 12 times the Sacramento Metropolitan Air Quality Management District's ("SMAQMD") CEQA significance threshold for airborne cancer risk of 10 per million. Offerman Comments, p. 4. In addition to residential exposure, the employees of the hotel are also expected to experience work-day exposures. *Id.*, p. 4. This exposure for employees would result in "significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in hotels and commercial and office buildings." *Id.*, p. 4. Assuming work eight hour days, five days per week, an employee would be exposed to a cancer risk of 18.4 per million, which is nearly double the 10 per million CEQA threshold. *Id.*, p. 5.

Mr. Offermann concludes that this significant environmental impact should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. *Id.*, p. 5. Mr. Offermann suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily

available. *Id.*, pp. 12-13. Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. *Id.*, p. 13. Since there is no CEQA analysis for this Project, none of these mitigation measures have been considered.

When a Project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes a fair argument that the project will have a significant adverse environmental impact and an EIR is required. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. See, e.g. *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 (County applies BAAQMD's "published CEQA quantitative criteria" and "threshold level of cumulative significance"). See also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 ("A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant"). The California Supreme Court made clear the substantial importance that an air district significance threshold plays in providing substantial evidence of a significant adverse impact. *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 ("As the [South Coast Air Quality Management] District's established significance threshold for NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact"). Since expert evidence demonstrates that the Project will exceed the SMAQMD's CEQA significance threshold, there is a fair argument that the Project will have significant adverse impacts and an EIR is required.

Mr. Offermann also notes that the high cancer risk that may be posed by the Project's indoor air emissions likely will be exacerbated by the additional cancer risk that exists from vehicle emissions from the adjacent and nearby roadways. *Id.*, pp. 11-12. Mr. Offermann concludes that:

It is my experience that based on the projected high traffic noise levels, the concentration of PM_{2.5} will exceed the National PM_{2.5} 24-hour standards and warrant installation of high efficiency air filters (i.e. MERV 13 or higher) in all mechanically supplied outdoor air ventilation systems.

Id., p. 12.

The failure of the City to provide any CEQA analysis to address the Project's formaldehyde emissions is contrary to California Supreme Court decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("*CBLA*"). In that case, the Supreme Court expressly holds that potential adverse impacts to future users and residents from pollution generated by a proposed project *must be addressed* under CEQA. At issue in *CBLA* was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. *CBLA*, 62 Cal.4th at 800-801. However, to the extent a

project may exacerbate existing environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. *Id.* at 801. In so holding, the Court expressly held that CEQA’s statutory language required lead agencies to disclose and analyze “impacts on *a project’s users or residents* that arise *from the project’s effects* on the environment.” (*Id.* at 800 (emphasis added).)

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. People will be residing in and using the Project once it is built and begins emitting formaldehyde. Once built, the Project will begin to emit formaldehyde at levels that pose significant health risks. The Supreme Court in *CBLA* expressly finds that this type of air emission and health impact by the project on the environment and a “project’s users and residents” must be addressed in the CEQA process.

The Supreme Court’s reasoning is well-grounded in CEQA’s statutory language. CEQA expressly includes a project’s effects on human beings as an effect on the environment that must be addressed in an environmental review. “Section 21083(b)(3)’s express language, for example, requires a finding of a ‘significant effect on the environment’ (§ 21083(b)) whenever the ‘environmental effects of a project will cause substantial adverse effects *on human beings*, either directly or indirectly.” (*CBLA*, 62 Cal.4th at 800 (emphasis in original.)) Likewise, “the Legislature has made clear—in declarations accompanying CEQA’s enactment—that public health and safety are of great importance in the statutory scheme.” (*Id.*, citing e.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d).) It goes without saying that the hundreds of future residents and hotel guests at the Project are human beings and the health and safety of those residents is as important to CEQA’s safeguards as nearby residents currently living adjacent to the Project site.

The Planning and Design Commission must complete CEQA review for the Project, and not approve the Project until CEQA review is completed.

II. THE CCSP EIR FAILS TO CONSIDER AND REQUIRE THE USE OF TIER 4 CONSTRUCTION EQUIPMENT

The CCSP EIR found that significant air quality impacts related to construction:

Construction of development pursuant to the proposed CCSP would generate NOx emissions that would exceed SMAQMD’s thresholds through at least 2021. Consequently, implementation of the proposed CCSP would result in a short-term significant impact due to NOx emissions.

CCSP EIR, 4.2-24. However, the CCSP EIR fails to discuss or require the use of Tier 4 construction equipment to reduce construction emissions. Tier 4 Final represents the cleanest burning equipment and therefore has the lowest emissions compared to other tiers, including Tier

4 Interim equipment.¹ The U.S. EPA's 1998 nonroad engine emission standards were structured as a three-tiered progression. Tier 1 standards were phased-in from 1996 to 2000 and Tier 2 emission standards were phased in from 2001 to 2006. Tier 3 standards, which applied to engines from 37-560 kilowatts (kW) only, were phased in from 2006 to 2008. The Tier 4 emission standards were introduced in 2004 and were phased in from 2008 to 2015.²

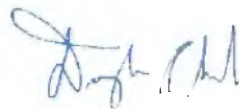
In the case of *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125, the court of appeal held that when a "first tier" EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later phases of the project to ensure that those unmitigated impacts are "mitigated or avoided." *Id.* citing CEQA Guidelines §15152(f). The court reasoned that the unmitigated impacts were not "adequately addressed" in the first tier EIR since they were not "mitigated or avoided." *Id.* Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been "adequately addressed," in a way that ensures the effects will be "mitigated or avoided." *Id.* Such a second tier EIR is required, even if the impact still cannot be fully mitigated and a statement of overriding considerations will be required. The court explained, "The requirement of a statement of overriding considerations is central to CEQA's role as a public accountability statute; it requires public officials, in approving environmental detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support." *Id.* at 124-125.

Here, the City is required to prepare an EIR for the proposed Project to ensure that construction impacts from the Project are mitigated using all feasible mitigation measures, including Tier 4 construction equipment. See CEQA Guidelines § 15162(a)(3)(D).

CONCLUSION

For the above and other reasons, the Planning and Design Commission should decline to approve the environmental exemption for the Project and instead direct Planning Staff to conduct further environmental review pursuant to CEQA

Sincerely,



Douglas Chermak

¹ See "San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects." August 2015, available at:

https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San_Francisco_Clean_Construction_Ordinance_2015.pdf, p. 6

² Emission Standards, Nonroad Diesel Engines, available at:

<https://www.dieselnet.com/standards/us/nonroad.php#tier3>

Appeal Decision
City of Sacramento Planning and Design Commission

Date: June 20, 2019

To the Planning Director:

I do hereby make application to appeal the decision of the City Planning and Design Commission on June 13, 2019, for project number P 18-056
(hearing date)

 X Granted by the City Planning Commission
 Denied by the City Planning Commission

Property Location: 930 K Street, Sacramento, CA

Grounds For Appeal: (explain in detail, you may attach additional pages)

The City of Sacramento has not conducted any environmental review pursuant to the California Environmental Quality Act ("CEQA") for the project, and has not analyzed or mitigated significant air quality impacts. Appellant requests that the City of Sacramento prepare a Draft Environmental Impact Report ("DEIR") for the project, and to circulate the DEIR for public review and comment prior to project approval. See Attached.

Appellant: Laborers International Union of North America, Local Union 185 Daytime Phone: (510) 836-4200
(please print)

Address: c/o Lozeau Drury LLP, 1939 Harrison Street, Suite 150, Oakland, CA 94612

Appellant's Signature: *Michael R. Dyer*

Please note that once this application is submitted to the City of Sacramento, your information may be subject to public record. However, please note that the City will not sell your data or information for any purposes.

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Filing Fee Received: Applicant (\$4,000)	Or Third Party (\$298)		<input checked="" type="checkbox"/> 14
Received By: <u>KARW FELIX</u>	Date: <u>06.21.2019</u>		
Distribute Copies to: Planning Director	<u>VIA EMAIL ONLY 14</u>		
Principal Planner	<u>VIA EMAIL ONLY 14</u>	Project Planner (original)	<input checked="" type="checkbox"/> 14

Submit the Appeal Form to 300 Richards Blvd, 3rd Floor, Community Development Department Public Counter, between 9AM to 4 PM on weekdays.

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JUN 21 2019

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BY: KFELIX